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Supreme Court, U. S.
FILED
MAY 20 1918
JAMES D. MAHER,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 1, Original.

THE STATE OF GEORGIA, PLAINTIFF,

vs.

THE TENNESSEE COPPER COMPANY

AND

THE DUCKTOWN SULPHUR, COPPER AND IRON COMPANY, LIMITED, DEFENDANTS.

ANSWER TO PETITION OF THE DUCKTOWN SULPHUR, COPPER AND IRON COMPANY, LIMITED, FOR MODIFICATION OF INJUNCTIVE ORDER APRIL 3, 1916.

In response to the petition stated, the State of Georgia respectfully represents:

1st. That it presented its case in proper form to the Supreme Court of the United States, and this court, after the fullest consideration, entered its decree as equitable and just.

2nd. The State of Georgia in that case alleged and proved that not only the sovereign rights of the State were being invaded, but that the homes of its citizens were being destroyed and the health of its people greatly injured by the escape of sulphurous fumes.

3rd. The modification now sought will renew such injury and damage both to the State of Georgia and its people, and the State of Georgia now alleges that such injury and damage will not be offset by the enlarged production, expressly denying the allegation in the petition that no damage of consequence will result to plaintiff upon such proposed increase.

4th. Plaintiff avers that this petition originated in, and was inspired by, the defendants, and not in the United States Government, and is proceeding in the interest of said defendants. While such modification might result in increased production of copper and sulphuric acid, it would result in greater damage to the State of Georgia and its citizens.

5th. Plaintiff is informed and believes that there are other methods by which the necessary supply of sulphuric acid and copper may be obtained at less expense and without damage to one of the States and its people.

6th. There are two defendants to this case. The Tennessee Copper Company is operating under a stipulation which has been made a decree of the Supreme Court and will not be affected directly by this petition. The State of Georgia begs leave to call the attention of the court to the peculiar relation existing between the two defendants and the State of Georgia in the matter of relative damage done by each defendant, and alleges that during the past year the damage done has been reduced almost to a minimum. It alleges that the modification of the decree now sought will

increase the damage, reopen the bitterness, increase litigation, take up the time of the Supreme Court in hearing protests, and renew the almost infinite troubles of the past, so familiar to this court.

7th. For the same reasons indicated the State of Georgia objects to a change of the decree requiring a weather record; such record will be valuable if future litigation become necessary.

Wherefore plaintiff prays that the petition for modification of the injunction be denied.

STATE OF GEORGIA,
By CLIFFORD WALKER,
Attorney-General.

[Endorsed:] No. 1, Original. Supreme Court of the United States. October Term, 1917. State of Georgia, Plaintiff, *versus* The Tennessee Copper Company and The Ducktown Sulphur, Copper & Iron Co., Limited, Defendants. In Equity. Answer to Petition of The Ducktown Sulphur, Copper & Iron Co., for Modification of Injunction. (Original.) Clifford Walker, Attorney-General.

NOV 21 1918
JAMES D. MAHER

In the Supreme Court of the United States

OCTOBER TERM 1918

STATE OF GEORGIA, BY ITS ATTORNEY-GENERAL, *Complainant,* *vs.* TENNESSEE COPPER COMPANY, ET AL., *Defendants.*	Original Cause No. 1 In Equity

JOINT MOTION OF THE STATE OF GEORGIA AND OF TENNESSEE COPPER COMPANY TO FILE A STIPULATION.

CLIFFORD WALKER,
Attorney-General for State of Georgia.

JOHN D. LITTLE,
ARTHUR G. POWELL,
MARION SMITH,
MAX F. GOLDSTEIN,
HOWARD CORNICK,
JOHN H. FRANTZ,
THOMAS G. McCONNELL,
CHARLES H. SEYMOUR,
Counsel for Tennessee Copper Co.

Johnson-Dallis Co., Atlanta, Ga.

In the Supreme Court of the United States

STATE OF GEORGIA,

vs.

TENNESSEE COPPER COMPANY AND THE DUCKTOWN SULPHUR, COPPER AND IRON COMPANY, LTD.

No. 1 Original.
October Term,
1918.
In Equity.

Now come the State of Georgia, by its Attorney-General, Clifford Walker, and the Tennessee Copper Company, by its counsel, John D. Little, Arthur G. Powell, Marion Smith, Max F. Goldstein, Howard Cornick, John H. Frantz, Thomas G. McConnell and Charles M. Seymour, and show to the court that on August 20, 1918, the State of Georgia, through its Governor, acting under authority of the General Assembly of said State, entered into a contract and stipulation with the Tennessee Copper Company, one of the defendants in said case, concerning the subject-matter of said suit, a copy of which contract is hereto attached as an exhibit and made a part hereof.

WHEREFORE, the parties above recited join in moving the court that said stipulation be entered of file in said

court and that the further progress of said cause so far as relates to the Tennessee Copper Company, be suspended and continued in accordance with the terms of said stipulation.

Clifford Walker,
Attorney General of the State of Georgia.

John D. Little,
Arthur G. Powell,
Marion Smith, Max F. Goldstein,
Howard Cravens,
John H. Frantz,
Herman G. McConnell, Charles N. Feazel,
Counsel for Tennessee Copper Company.

In the Supreme Court of the United States

THE STATE OF GEORGIA,
(By Its Attorney-General),
Complainant,

vs.

TENNESSEE COPPER COMPANY AND DUCKTOWN SULPHUR, COPPER & IRON COMPANY,
Defendants.

Original Cause In Equity.

AGREEMENT AND STIPULATION.

In the above-entitled cause it is agreed and stipulated by and between the State of Georgia, hereinafter known as the State, by and through his Excellency Hugh M. Dorsey, Governor of said State, and the Tennessee Copper Company hereinafter known as the Company, as follows:

Whereas, under a joint resolution of the General Assembly of Georgia, enacted at its session of 1918, known as Senate Resolution No. 82, approved August 20th, 1918, the Governor is authorized and directed on behalf of the State of Georgia to agree with the Tennessee Copper Company on certain modifications of an existing contract with the Tennessee Copper Company in order to effectuate and harmonize the consistent operation of said contract with a

contract which was authorized and directed to be entered into with the Ducktown Sulphur, Copper & Iron Company, Limited, under the same resolution:

Now, therefore, the said Governor on behalf of the State, and the said Tennessee Copper Company agree on the following modifications of the present existing contract between the parties:

Where a claim is filed by any citizen (as hereinafter defined) of Georgia on account of damages alleged to have been done in this State on account of sulphur dioxide gases, from the plants of either or both of said Companies, it shall not be necessary for the claimant to specify or prove which of the said Companies was legally responsible therefor; but if the said Board of Arbitration shall find that such citizen has been so damaged by either or both of said Companies, they shall proceed to assess and award the said damages, and each and both of said Companies shall be liable in said award to the extent and in the manner hereinafter specified. Of all awards so made, two-thirds of the amount shall be assessed against the Tennessee Copper Company, and one-third of the amount shall be assessed against the Ducktown Sulphur, Copper & Iron Company, Limited, and each of said Companies and their sureties shall be accordingly liable on their bonds filed in accordance with the provisions of the respective contracts, to the amount and extent of said bonds. Of all the expenses of the arbitration, including salaries of arbitrators and umpire, and of the inspector and inspectors appointed by the Governor, and all such other expenses as the Tennessee Copper Company is under its present existing contract re-

quired to pay, the Tennessee Copper Company shall pay two-thirds, and the Ducktown Sulphur, Copper & Iron Company, Limited, shall pay one-third.

The said contract with the Tennessee Copper Company now in existence is extended for an additional period of three years from its expiration, provided, nevertheless, that the provisions of Sections 10 and 12 of said contract as set forth in the joint resolution, approved August 6th, 1913, in regard to the termination of said contract on notice, and by which the same may be cancelled failure of the Company bona fide to live up to the contract, shall be and remain a part of the contract with the Tennessee Copper Company as herein amended and extended—this provision, however, not to militate against the enforcement of the provision for the cancellation of this present contract, under the terms and conditions hereinafter mentioned.

In the event that the Ducktown Sulphur, Copper & Iron Company, Limited, shall breach its contract made under the same conditions as this contract with the Tennessee Copper Company, or if said contract with the Ducktown Sulphur, Copper & Iron Company, Limited, shall be otherwise terminated under its provisions, said breach or termination shall not affect the status of this contract with the Tennessee Copper Company, except that, in that event, the provisions herein made as to the proportion of damages and expenses between the two companies shall be abrogated, and in this case the liability shall be in accordance with the existing provisions of the present contract of the Tennessee Copper Company.

The Tennessee Copper Company further agrees that upon the filing of its assent to this modification of its existing contract, or within ten days thereafter, it will file a solvent bond in the sum of $16,500.00 with some solvent surety company admitted to do business in this State as surety, payable to the Governor and his successors in office in the penal sum of $16,500.00, conditioned upon the payment of its proportion as herein specified of each and every award made within the limits and under the terms of this contract, and each and every item of expense due to be paid by said Company as and when the same shall become payable under this contract; and will on or before the 1st day of April of each and every year during the continuance of this contract file a new bond in like amount for each year, but said Company may aggregate a number of years together and file a bond with the penalty as stated above multiplied by the number of years it is intended to cover, in lieu of filing a separate bond for each and every year; and if said Company shall fail to file said bond or bonds when due, the Governor shall give it notice by registered mail of its failure, and if the bond is not filed within thirty days after the giving of such notice, then the Governor shall have the power to declare this contract terminated and ended. The contract year, for the purpose of this contract, shall run from October 1st to October 1st of each year.

It is further agreed that the Governor may increase the salary of the State's umpire to an amount not exceeding $2,500.00 per annum, to be paid by and apportioned between the two Companies on the basis above provided for; and the Governor may in his discretion also provide a salary not exceeding $1,250.00 to the State's arbitrator, to be paid

by and apportioned between the two Companies, as above provided for; but nothing herein shall be construed as requiring the Governor to pay said State's arbitrator a salary instead of employing him on a per diem basis.

The Tennessee Copper Company further agrees not to —save with the consent of the Governor—permit the escape into the air of sulphur dioxide gases, or any other injurious fumes or gases, such as are covered by the injunction against the Ducktown Sulphur, Copper & Iron Company, Limited, in the above recited litigation in the Supreme Court of the United States, the total sulphur or injurious content of which shall exceed eighty-eight tons in any one day from April 10th to October 1st of each year; provided, nevertheless, that if the Tennessee Copper Company shall within thirty days from this date notify the Governor in writing that it elects not to abide this limitation, the Governor may, without giving any other reason therefor, give notice to said Company that this contract is rescinded, and thereupon the status shall be the same as if this contract had not been entered into, and as if the above recited resolution No. 82 had never been passed by said General Assembly.

It is further stipulated and agreed that the Governor, notwithstanding his entering into this contract, shall have opportunity of ascertaining whether or not said contract can expediently be carried out as outlined in the Legislative resolution aforesaid, and the modifications made under this agreement, without increasing the damage to the citizens of Georgia, (and the parties hereto construe the words "citizens of Georgia" to include all persons, firms and cor-

porations); and it is therefore agreed by the parties hereto that the General Assembly of Georgia at its 1919 session, or the Governor at any time prior thereto, whenever in his judgment and discretion conditions so demand, shall have the power to authorize or direct the rescision of this contract, or its modification, in any respect, and if the Tennessee Copper Company does not agree to such modification as the Legislature or the Governor shall require, then this contract shall be cancelled, and the status shall be the same as if this contract had not been made, and as if the above-recited resolution had never been passed. This provision is a right granted to the State in addition to those contained in Sections 10 and 12 of the contract of 1913 between the State of Georgia and the Tennessee Copper Company, as contained in the resolution approved August 6th, 1913; and if this contract provision shall in any wise conflict with the terms of said Sections 10 and 12, either or both of them, then that construction which shall be adopted by the Governor shall obtain in the interpretation of the meaning of said contract and modifications. If within the period above specified the Governor shall in writing propose any modification of this contract, or terms different from those stated herein, or terms different from those stated in said resolution, and the Tennessee Copper Company does not give its assent to same, the Governor may without any other reason therefor rescind this agreement, and the status shall be the same as if this contract had not been made, and as if said resolution had not been passed by the General Assembly, the provisions of Sections 10 and 12 of the contract of 1913 notwithstanding.

Except as herein indicated, the existing contract with the Tennessee Copper Company shall govern and be a part of said contract as herein extended and modified.

Neither by the passage of the above recited resolution nor by the making of this contract thereunder shall the State of Georgia be held to have waived any of her rights in the Supreme Court of the United States, except for the limited time, and in the limited manner herein expressed, and no recital herein, or in said resolution contained, shall ever in any court be used by either party against the other as an admission, but the same shall be treated as a proposition of temporary compromise.

This agreement is based, among other considerations, upon the consideration of promises to the same effect as those contained herein, made by the Tennessee Copper Company to the Governor, in order to induce him to approve the above-recited resolution.

IN WITNESS WHEREOF, these presents have been signed in duplicate by his Excellency, Hugh M. Dorsey, Governor, in behalf of the State of Georgia, and by the Tennessee Copper Company, by its lawful Attorney in Fact, Arthur G. Powell, this 20th day of August, 1918.

STATE OF GEORGIA,

By HUGH M. DORSEY,
Governor.

TENNESSEE COPPER COMPANY,

By ARTHUR G. POWELL,
Attorney in Fact.

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Supreme Court, U. S.
FILED
DEC 20 1918
JAMES D. MAHER,

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 1, Original.

THE STATE OF GEORGIA, COMPLAINANT,

vs.

TENNESSEE COPPER COMPANY AND DUCKTOWN SULPHUR, COPPER & IRON COMPANY.

(1.) Joint Motion of The State of Georgia and Ducktown Sulphur, Copper & Iron Company for Leave to File Stipulation.

(2.) Stipulation and Proposed Form of Order.

(3.) Agreement and Stipulation between The State of Georgia and Ducktown Sulphur, Copper & Iron Company.

CLIFFORD WALKER,
Attorney General for State of Georgia.

W. B. MILLER,
Counsel for Ducktown Company.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 1, Original.

THE STATE OF GEORGIA, COMPLAINANT,

vs.

TENNESSEE COPPER COMPANY AND DUCKTOWN SULPHUR, COPPER & IRON COMPANY.

(1.) Joint Motion of The State of Georgia and Ducktown Sulphur, Copper & Iron Company for Leave to File Stipulation.

(2.) Stipulation and Proposed Form of Order.

(3.) Agreement and Stipulation between The State of Georgia and Ducktown Sulphur, Copper & Iron Company.

The plaintiff and defendant, The Ducktown Sulphur, Copper & Iron Co., Limited, hereby move for leave to file a stipulation, and for the entry of an agreed order to be based thereon.

This November 14, 1918.

STATE OF GEORGIA,
By CLIFFORD WALKER, *Attorney General.*
THE DUCKTOWN SULPHUR, COPPER & IRON CO., LIMITED,
By W. B. MILLER,
WILLIAM BUTT,
Attorneys.

[Endorsed:] Supreme Court U. S. October Term, 1918. Term No. 1, Original. State of Georgia, Complainant, *vs.* Tennessee Copper Company *et al.* Joint motion for leave to file stipulation, and for entry of an agreed order to be based thereon. Filed November 21, 1918.

IN THE SUPREME COURT OF THE UNITED STATES,

AT WASHINGTON, D. C.

No. 1, Original.

STATE OF GEORGIA

vs.

TENNESSEE COPPER CO. ET AL.

Stipulation.

Agreeably to Georgia Senate Resolution 82 (Executive No. 59, 1918), approved August 20, 1918, and appearing on page 938, published acts of Georgia, 1918, and a contract between the above plaintiff and defendant, The Ducktown Sulphur, Copper & Iron Co., Limited, made pursuant to said Georgia resolution, and which contract is dated August 20, 1918—

It is now stipulated that the orders and decrees heretofore passed in the case above are modified to accord with said resolution and contract, and that a confirmatory order to correspond (attached hereto) may be entered in this cause at the October term next.

August 20, 1918.

STATE OF GEORGIA,
By CLIFFORD WALKER,
Attorney General.

THE DUCKTOWN SULPHUR, COPPER & IRON CO., LTD.,
By W. B. MILLER,
Attorney.

IN THE SUPREME COURT OF THE UNITED STATES.

No. 1, Original.

STATE OF GEORGIA
vs.
TENNESSEE COPPER CO. ET AL.

On joint motion of the interested parties, it is ordered:

(1.) That an agreed copy of Georgia Senate Resolution No. 82, passed 1918, and appearing in published acts of Georgia (1918, p. 938), be filed and hereafter constitute a part of the record herein.

(2.) That an agreed copy of a contract entered into between the State of Georgia and defendant, The Ducktown Sulphur, Copper & Iron Co., Limited, dated August 20, 1918, this day submitted by the parties, be likewise so filed and become a part of the record herein.

(3.) That pursuant to said resolution and contract, this cause as to said defendant, The Ducktown Sulphur, Copper & Iron Company, Limited, is continued to the October Term, 1922, but with leave reserved to the interested parties or either of them, on proper notice and showing, to ask a modification of this order in the meantime, as they may be advised.

(4.) That by consent of parties the terms, conditions and limitations in said resolution and contract contained be and they are hereby substituted in lieu and stead of those heretofore imposed by this court, which latter are now modified accordingly.

O. K.

W. B. MILLER,
Attorney for Ducktown Co.
CLIFFORD WALKER,
Attorney General.

[Endorsed:] Supreme Court U. S. October Term, 1918. Term No. 1, Original. State of Georgia, Complainant, *vs.* Tennessee Copper Company *et al.* Stipulation of counsel and proposed form of order to be entered. Filed Dec. 9, 1918.

(Copy.)

IN THE SUPREME COURT OF THE UNITED STATES.

Original Cause in Equity.

STATE OF GEORGIA (*By Its Attorney General*), *Complainant,*

vs.

TENNESSEE COPPER COMPANY AND DUCKTOWN SULPHUR, COPPER & IRON COMPANY, *Defendants.*

Agreement and Stipulation.

In the above-entitled cause it is agreed and stipulated by and between the State of Georgia, by and through his Excellency Hugh M. Dorsey, Governor of said State, herein called the State, and the Ducktown Sulphur, Copper & Iron Company, Limited, herein called the Company, as follows:

First. The Company binds itself to maintain and operate its sulphuric acid plant and acid-making appliances and processes at the highest practical state of efficiency.

Second. The Company further agrees that during the life of this contract it will not operate its green ore furnaces from April 10th to October 1st of each year beyond the full normal capacity of its sulphuric acid plant; and said Company further agrees not to permit the escape into the air of sulphur dioxide gases or any other injurious fumes covered by the injunction granted against the said Company in the above-entitled cause issued by the United States Supreme Court, the total sulphur or other injurious content of which shall exceed forty tons in any one day from April 10th to October 1st of each year, save with the consent of the Governor.

Third. The Company shall make sworn reports to the Governor of the State, or such other person as he may designate, as to the tonnage of green ore smelted and tonnage of

acid made during operations under this contract, such reports to be made at such intervals and in such form and manner as may be prescribed by the Governor of the State, or such other person as he may designate, with full right on the part of such person as the Governor may designate to inspect the plant of the Company at such time or times and for such period of time during the life of this contract between said dates of each year as to the Governor may seem advisable or necessary for his information as to such tonnage of ore smelted and acid made during said period from year to year, the compensation of such inspector not to exceed one hundred and twenty-five ($125.00) dollars per month during the time engaged in such work, to be paid by said Company on the warrant of the Governor exclusive of the amount of $8,500.00 hereinafter provided; and the Governor shall have the right to appoint such further inspectors as he may find necessary to keep himself informed as to the operations of this contract, to be paid for as one of the expenses of the arbitration system hereinafter provided for.

Fourth. The said Company shall file with the Governor contemporaneously with the execution of this contract, or within ten days thereafter, a bond with some solvent surety company admitted to do business in this State as surety, and payable to the Governor and his successors in office, in the penal sum of eight thousand five hundred ($8,500.00) dollars, conditioned for the payment of its proportion, as herein specified, of each and every award made within the limits of and under the terms of this contract, and each and every item of expense due to be paid by said Company, as and when the same shall become payable under this contract; and on or before the first day of April of each and every year during the continuation of this contract, the said Company shall file a new bond for each year, but said Company may aggregate a number of years together and file bond with the penalty as stated above multiplied by the number of years it is intended to cover, instead of filing bond for each of said years. If said Company shall fail to

file said bond when due to be filed, the Governor shall notify said Company by registered mail of its failure, and if the bond is not filed within thirty days after the giving of such notice, the Governor shall have the power to declare this contract terminated and ended. The contract year, for the purpose of this contract, shall run from October 1st to October 1st of each year; the first bond of said Company to be filed on the execution of this contract, shall be construed as covering the period from *October 1, 1917, to October 1, 1918.*

Fifth. Said Company agrees to submit to a Board of Arbitration created under act approved August 6, 1913 (Georgia Laws, 1913, pages 1295-1302), as amended and extended by resolution of the General Assembly approved August 4, 1916 (Georgia Laws, 1916, pages 1056-1058, inclusive), and further modified by the provisions of joint resolution of the General Assembly of Georgia, adopted at a session of 1918, known as Senate Resolution 82, approved August 20, 1918, the ascertaining and assessment of such damages as may be caused by said gases or fumes to the extent and the manner herein set forth, but to reserve to all citizens of the State of Georgia who do not submit their claims to such arbitration, the right to sue upon or otherwise adjust their claims or demands against said Company according as they might do if this resolution were not passed.

Sixth. The power of the Governor of the State of Georgia, or such person as he may designate, to make and formulate rules and regulations for the governing of such arbitration proceedings set forth in the above-recited resolution, approved August 6, 1913, are consented to and agreed on as a part of this contract.

Seventh. In order to effectuate and harmonize the consistent operation of this contract with the contract between the State of Georgia and the Tennessee Copper Company relating to the same subject-matter, it is further stipulated and agreed that wherever a claim is filed by any citizen of Georgia (and the parties construe the words "citizens of Georgia"

to include all persons, firms and corporations) on account of damages alleged to have been done in this State on account of sulphur dioxide or other injurious gases of the character mentioned above from the plants of either or both of said Companies, it shall not be necessary for the claimant to specify or prove which of said Companies is legally responsible therefor; but if said Board of Arbitration shall find that such citizen has been damaged by either or both of said Companies, they shall proceed to assess and award the damages, and each and both of said Companies shall be liable in said award to the extent and amount herein specified, to wit: Of all awards so made, two-thirds of the amount shall be assessed against the Tennessee Copper Company, and one-third against the Ducktown Sulphur, Copper and Iron Company, Limited, and each of said Companies and their sureties shall be accordingly liable on their bonds filed in accordance with the provisions of the contracts dealt with in the above-recited joint resolution, No. 82, approved August 20th, 1918, to the amount and extent of said bonds. Of all expenses of arbitration, including salaries of arbitrators and umpire, and of the inspector or inspectors appointed by the Governor, and all such other expenses as the Tennessee Copper Company is under its existing contract required to pay, the Tennessee Copper Company shall pay two-thirds, and the Ducktown Sulphur, Copper and Iron Company, Limited, shall pay one-third.

Eighth. No citizen of the State of Georgia having or claiming to have any right of action for damages on account of injury done by said Company shall be bound by the terms of this contract, unless such citizen shall voluntarily submit his claim to arbitration under the rules and regulations referred to in the foregoing paragraph of this contract.

Ninth. The State agrees that, provided this contract shall not have been breached by the Company or otherwise terminated in accordance with the manner herein provided, it will not, prior to October 1, 1922, apply for injunction or other relief against the Ducktown Sulphur, Copper and Iron

Company, Limited, in the above-entitled matter, but so long as this contract shall remain of force as to said Company, the State of Georgia consents it may operate its green ore furnaces to an extent not exceeding the full normal capacity of the sulphuric acid plant, and to an extent which shall not permit the escape into the air of sulphur dioxide or other gases of the character mentioned above beyond the limit stated above during the period previously mentioned. Upon the termination of this agreement, whether by breach, by lapse of time, by redecision, cancellation or otherwise, the rights and defenses of the parties hereto in the cases mentioned above shall not be abridged, and the status of the above-entitled cause shall as to such parties be as though no contract had been entered into between the parties, and the State shall have the right to undertake to obtain relief therein, and the Company shall have the right to undertake defense thereto, except that the Company agrees that it shall not have the right and will not make the defense that the State has waived or been deprived of the right to a decree of injunction because this contract has been entered into between the parties hereto. Neither by the passage of the resolution above-recited, approved August 20, 1918, nor by the making of this contract thereunder, shall the State of Georgia be held to waive any of her rights in the Supreme Court of the United States except for the limited time and in the limited way herein expressed, and no recitals in this contract or in said resolution shall ever in any Court be used by either party against the other as an admission, but the same shall be treated as a proposition of temporary compromise.

Tenth. Whenever from time to time, in the opinion of the Governor of the State, there shall arise a necessity for the determination of the *bona fide* performance of this contract, then, upon thirty days' written notice to the Company, addressed to it at Isabella, Tennessee, the Company shall appoint one arbitrator of its own selection; the State by the Governor shall appoint the State Chemist of the State of

Georgia, or such other person as the Governor may deem proper, as arbitrator of the State, and such two arbitrators shall select some competent person as umpire, and in the event said two arbitrators cannot agree on an umpire, then such umpire shall be appointed by the President of the University of Virginia, which board so created shall determine the question of the *bona fide* performance of this contract, and a majority finding of such board on that question shall be final and binding upon the parties hereto; and in the event such finding is that there has been a breach of this contract by the Company, the State may thereupon at its election treat this contract as at an end, and the status of the above entitled cause shall thereupon be as though no contract had been entered into between the parties, and the State shall have the right to undertake to obtain relief therein, and the Company shall have the right to undertake to make a defense thereto. In the event of cancellation, as provided in this clause, the bond filed under the provision of this contract shall remain liable for the payment of such awards and expenses as may theretofore have been made, or as may thereafter be made or incurred during the remainder of the year in which said cancellation shall have occurred.

Eleventh. Neither of the parties hereto admit any of the claims or contentions of the other parties hereto in the above-entitled cause, and nothing herein contained shall be construed as any admission by the Company that any damage is now being or will hereafter be done to property of citizens of Georgia or to the State of Georgia.

Twelfth. This contract, unless sooner terminated by breach, as provided in paragraph ten hereof, or unless sooner cancelled, rescinded or terminated under one or the other provisions of this contract, shall remain in effect for at least a period of time heretofore mentioned; it shall continue thereafter unless at least six months' previous notice in writing shall be given by either party to the other party of its intention to terminate this contract.

Thirteenth. The Governor, notwithstanding his entering into this contract and the contract concurrently made with the Tennessee Copper Company under the same resolution, shall have opportunity of ascertaining whether said contracts can be carried out as outlined under the legislative resolution aforesaid and in the modification under this agreement, without increase of damage to the citizens of Georgia. It is therefore agreed by the parties hereto that the General Assembly of Georgia at its 1919 session, or the Governor of Georgia at any time prior thereto, whenever in his judgment and discretion the conditions shall demand, of which he shall be the judge, shall have the power to authorize or direct a rescision of this contract, or its modification in any respect, and if said Ducktown Sulphur, Copper and Iron Company, Limited, does not agree to such modification as said legislature or said Governor may so require it, then this contract shall stand cancelled, and its status shall be the same as if the above-recited resolution had never been passed. This provision is a right granted to the State additional to that contained in sections 10 and 12 of this contract, and if in any wise in conflict with the provisions of said sections 10 and 12, the provisions in this section of the contract in the State's favor shall obtain. It is distinctly agreed and understood if during the period mentioned in this paragraph of this agreement the *Governor shall in writing propose any modification to this contract,* or new or different terms to those herein stated, or from those stated in said resolution, and the said Company shall not give its assent to the same, the Governor may, without any other reason therefor, rescind this contract, and the status will be the same as if this contract had never been entered into, anything in sections 10 and 12 of this contract to the contrary notwithstanding.

Fourteenth. It is further agreed that if the Tennessee Copper Company shall within thirty days withdraw its assent to the provisions of its contract concurrently made herewith, by which it is stipulated that the total sulphur-dioxide-

made gases made by it one day shall not exceed eighty-eight tons, as it has reserved the right to do under its contract, then the Governor may for that reason alone rescind this contract, and the status shall be the same as if it had not been entered into.

Fifteenth. This contract having been made contemporaneously with a contract made this day between the State of Georgia and the Tennessee Copper Company, and it being intended to effectuate and harmonize the consistent operation of this contract with said contract, it is agreed that in the event a breach or termination of either of said contracts shall occur, and the other contract shall not be breached or terminated, the same shall not affect the status of the contract with the Company whose contract has not been breached, except that in that event the provisions herein as to the apportionment of damages and expenses between the two Companies shall be abrogated and the Company whose contract is not terminated shall be liable for awards and expenses in accordance with the existing provisions of the contract with the Tennessee Copper Company, authorized under the above-recited resolution, approved August 14, 1916.

Sixteenth. The said Company hereby makes the specified agreement to pay its proportion of such awards as the Board of Arbitration above referred to may make in each year, and its proportion of the expenses as mentioned above each year, not to exceed the sum of $8,500.00 specified above within ten days after the filing of the awards with the Governor and notice thereof to the said Company; provided, nevertheless that the expenses to be paid under the terms of this contract shall be paid by such Company as they arise, and upon warrants or drafts drawn by the Governor on said Company as and when said expenses are due. If the amounts paid out in awards and expenses in a year be less than $8,500.00, and the amount of awards and expenses accruing for each succeeding year shall exceed said sum of $8,500.00, then the Company shall be liable to the extent of the difference between $8,500.00 and the amount actually paid out for awards and expenses, it being the intention to make the

liability cumulative, but not to exceed $34,000.00 during the four years.

Seventeenth. The Governor may in his discretion increase the salary of the State's umpire to an amount not to exceed $2,500.00 per annum, to be paid in proportion between the two Companies on the basis above provided for, and the Governor may also provide a salary in his discretion, not exceeding $1,250.00 per annum, for the State's arbitrator, to be paid by and proportioned between the two Companies, as provided for; but nothing herein shall be construed as requiring the Governor to place the State's arbitrator upon a salary basis rather than upon a per diem basis.

Eighteenth. Except as herein otherwise indicated, this contract and the basis and extent of liability thereon, and the method of arbitration, shall conform to the operations of the present existing contract between the State of Georgia and the Tennessee Copper Company.

Nineteenth. This agreement is based, among other considerations, upon the consideration of promises to the same effect as those herein contained which were made by said Company to the Governor in order to induce him to approve the resolution above recited of August 20, 1918.

In Witness Whereof, these presents have been signed by his Excellency Hugh M. Dorsey, Governor of the State of Georgia, on behalf of said State, by the Ducktown Sulphur, Copper and Iron Company, Limited, by its duly authorized General Manager, and by its Attorney-at-Law, this 20th day of August, 1918.

STATE OF GEORGIA,
By HUGH M. DORSEY,
Governor.

DUCKTOWN SULPHUR, COPPER & IRON COMPANY,
By W. F. LAMOREAUX,
General Manager.
By WILLIAM BUTT,
Attorney at Law.

[Endorsed:] Supreme Court U. S. October Term, 1918. Term No. 1, Original. State of Georgia, Complainant, *vs.* Tennessee Copper Company et al. Agreement and stipulation between State of Georgia and Ducktown Sulphur, Copper & Iron Company. Filed December 20, 1918.

FILE COPY

Office Supreme Court, U. S.
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WM. R. STANSBURY
Clerk

In the Supreme Court of the United States

OCTOBER TERM 1921

STATE OF GEORGIA,
Complainant,

vs.

TENNESSEE COPPER COMPANY AND DUCKTOWN SULPHUR, COPPER & IRON COMPANY, LIMITED.
Defendants

Original Cause
No. 1
In Equity

JOINT MOTION OF STATE OF GEORGIA AND DUCKTOWN SULPHUR, COPPER & IRON CO., LIMITED, TO FILE A STIPULATION

GEORGE M. NAPIER,
Attorney-General for State of Georgia.

WILLIAM BUTT and W. B. MILLER,
Attorneys for Ducktown Sulphur, Copper & Iron Co., Limited.

In the Supreme Court of the United States

STATE OF GEORGIA, *vs.* TENNESSEE COPPER COMPANY AND DUCKTOWN SULPHUR, COPPER & IRON CO., LTD.	Original Cause No. I In Equity October Term, 1921.

Now come the State of Georgia, by its Attorney-General, George M. Napier, and Ducktown Sulphur, Copper & Iron Co., Limited, by its counsel, William Butt and W. B. Miller, and show to the Court that on the 30th day of July, 1921, the State of Georgia through its Governor and in pursuance of a joint resolution of the General Assembly of Georgia, the House and the Senate concurring, entered into a contract and stipulation in respect of the subject matter of the above entitled cause, a copy of which contract is hereto attached as an Exhibit and is made a part hereof, and there being attached to said contract a copy of the resolution authorizing said contract and under which it has been executed.

WHEREFORE, the State of Georgia and The Ducktown Sulphur, Copper & Iron Company, Limited, do now join in moving the Court that this contract and resolution attached thereto be entered of record as a stipulation of the State of Georgia and Ducktown Sulphur, Copper & Iron Company, Limited, in said cause, and that the Court give effect thereto by appropriate order that the further progress of said cause so far as relates to Ducktown Sulphur, Copper & Iron Company, Limited,, be suspended and continued in accordance with the terms of said contract and

stipulation, and that the Court grant all such other and further orders in the premises as shall be necessary to carry said contract and stipulation into force and effect.

GEORGE M. NAPIER.
Attorney General of the State of Georgia.

WM. BUTT,
W. B. MILLER
Attorneys for Ducktown Sulphur, Copper & Iron Company, Limited.

In the Supreme Court of the United States

STATE OF GEORGIA,
(By its Attorney-General)
Complainant,

vs.

TENNESSEE COPPER COMPANY
and
DUCKTOWN SULPHUR, COPPER & IRON COMPANY, Ltd.,
Defendants

Original Cause
No. 1
In Equity.

AGREEMENT AND STIPULATION.

In pursuance of a joint resolution of the Senate and House of Representatives for the State of Georgia, approved July 27th, 1921, a copy of which is hereto attached, it is stipulated and agreed in the above entitled cause by and between the State of Georgia, through His Excellency Thos. W. Hardwick, Governor of said State, herein called the State, and the Ducktown Sulphur, Copper & Iron Company, Ltd., herein called the Company, as follows:

1. The Company binds itself to maintain and operate its sulphuric acid plant and acid making appliances and processes at the highest practical state of efficiency.

2. The Company further agrees that from April 10th to October 1st of each year, during the life of this contract, it will not permit the escape into the air of sulphur dioxide gases which have a total sulphur content of more than forty (40) tons in any one day.

3. The Company shall make sworn reports to the Governor of the State, or such other person as he may designate, as to the tonnage of green ore smelted and tonnage of acid made during operations under this contract, such reports to be made at such intervals and in such form and manner as may be prescribed by the Governor of the State, or such

other person as he may designate, with full right on the part of the State's arbitrator, acting ex-officio as inspector hereunder, or such person as the Governor may specially designate in accordance with the further provisions hereof, to inspect the plant of the Company at such time or times during the life of this contract between said dates of each year as to the Governor may seem advisable or necessary for his information as to such tonnage of ore smelted and acid made during said period from year to year.

4. The said Company shall file with the Governor on October 1st, 1921, (to cover the period from October 1st, 1921, to October 1st, 1922), a bond with some solvent surety company admitted to do business in this State as surety, and payable to the Governor and his successors in office, in the penal sum of Eight Thousand Five Hundred ($8,500) Dollars, conditioned for the payment of its proportion, as herein specified, of each and every award made within the limits of and under the terms of this contract, and each and every item of expense due to be paid by said Company, as and when the same shall become payable under this contract; and on or before the first day of October of each and every year during the continuance of this contract, the said Company shall file a new bond for each year; but the said Company may aggregate a number of years together and file bond with the penalty as stated above multiplied by the number of years it is intended to cover, instead of filing bond for each of said years. If said Company shall fail to file said bond when due to be filed, the Governor shall notify said Company by registered mail of its failure, and if the bond is not filed within thirty days after the giving of such notice, the Governor shall have the power to declare this contract terminated and ended. The contract year, for the purpose of this contract, shall run from October 1st to October 1st of each year, and, as stated above, the first bond of said Company to be filed under this contract shall be for the period from October 1st, 1921, to October 1st, 1922. The Company has heretofore filed a bond which is now in effect and which covers the period from October 1st, 1920, to October 1st, 1921, and this bond terminating October 1st, 1921, shall be discharged when the bond is filed under this contract on October 1st, 1921.

5. The Company agrees to submit to a board of arbitra-

tion, to be constituted as hereinafter provided, the ascertainment and assessment of such damages as may be caused to the citizens of the State of Georgia and their property by sulphur dioxide gases produced by its plant in the State of Tennessee, to an amount and extent not exceeding Eight Thousand Five Hundred ($8,500) per annum; but there shall be reserved to all citizens of the State of Georgia who do not submit their claims to such arbitration the right to sue upon or otherwise adjust their claims or demands against said Company accordingly as they might do if this contract were not made.

6. The board of arbitration herein referred to shall be composed as follows: Ducktown Sulphur, Copper & Iron Company, Ltd., and Tennessee Copper Company, shall appoint one arbitrator whose compensation and expenses shall be paid by them, to be known as the Companies' arbitrator. The Governor of the State shall appoint one arbitrator who shall be known as the State's arbitrator. Unless the arbitrator appointed by the companies aforesaid shall be a citizen of one of the three counties of Fannin, Gilmer or Union, then the State's arbitrator shall be a citizen of one of those counties and may be selected from one of those counties, even though the Companies' arbitrator also resides therein. The State's arbitrator shall also be ex-officio an inspector and shall perform the duties which have hitherto devolved upon the inspectors appointed by the Governor under prior existing contracts between the State of Georgia and the Ducktown Sulphur, Copper & Iron Company, Ltd., and the Tennessee Copper Company. In the event the arbitrator appointed by the Companies and the State's arbitrator are unable to agree in respect of any award or any matter affecting their duties under the contract, and only in the event of such disagreement, the Governor shall designate some disinterested person to act as umpire in the matter as to which the two arbitrators have so disagreed, and the decision of the majority of the board as thus constituted shall constitute the action of the board and be binding accordingly. The State's arbitrator shall receive a salary not exceeding One Hundred ($100) Dollars a month for the period from April 10th to November 1st of each year, and his necessary expenses to be audited and allowed by the Governor, when he is actually engaged in

the work, the same to cover his services as arbitrator and inspector. Ducktown Sulphur, Copper & Iron Company, Ltd., and the Tennessee Copper Company may arrange to have the salary of the State's arbitrator paid direct to him by them; however, all of the necessary expenses, both of the Companies' arbitrator and of the State's arbitrator, while engaged in all of their duties in respect to this contract, shall be paid by the Companies' arbitrator and the Companies' arbitrator shall keep separate account of the expenses of the State's arbitrator and render bills in duplicate to the Ducktown Sulphur, Copper & Iron Company, Ltd., and the Tennessee Copper Company for same; and such sums so paid shall operate to discharge the liability of said Companies to the same extent as if paid to the Governor and disbursed by him to the State's arbitrator, or as if paid to the arbitrator upon order of the Governor; and the Companies shall file with the Governor duplicates of the receipted expense bills and salary receipts of the State's arbitrator for the funds so paid to him.

The umpire, if and when appointed in accordance with the provisions of this contract, shall receive as compensation for his services an amount not exceeding Ten ($10) Dollars per day and his actual expenses while engaged in determining the matters as to which he is called in by the disagreement of the two arbitrators, the same to be fixed, audited and allowed by the Governor, but the same may be paid to him by the two Companies directly, with duplicate receipt to the Governor, in like manner as provided in the case of the payment for the services of the State's arbitrator.

The Governor may in his discretion, on complaint of any citizen, or at any other time when he thinks the circumstances so require, send a special inspector, at the expense of the two Companies, to visit said plants or the territory adjacent thereto and make special report to the Governor on any matter as to which the Governor may desire such special information.

7. The power of the Governor of the State of Georgia, or such person as he may designate, to make and formulate rules and regulations for the governing of such arbitration proceedings set forth in a joint resolution of the

General Assembly of Georgia, approved August 6th, 1913, relating to general subject-matter herein contained and under which a contract was entered into between the State of Georgia and the Tennessee Copper Company, are consented to and agreed on as a part of this contract.

8. In order to effectuate and harmonize the consistent operation of this contract with the contract between the State of Georgia and the Tennessee Copper Company, relating to the same subject-matter, it is further stipulated and agreed that wherever a claim is filed by any citizen of Georgia (and the parties construe the words "citizen of Georgia" to include all persons, firms and corporations), on account of damages alleged to have been done in this State on account of sulphur dioxide gases from the plants of either or both of said companies, it shall not be necessary for the claimant to specify or prove which of said companies is legally responsible therefor; but if said board of arbitration shall find that such citizen has been damaged by either or both of said companies, they shall proceed to assess and award the damages, and each and both of said companies shall be liable in said award to the extent and amount herein specified, to-wit: Of all awards so made, one-third of the amount shall be assessed against the Ducktown Sulphur, Copper & Iron Company, Ltd., and two-thirds against the Tennessee Copper Company, and each of said companies and their sureties shall be accordingly liable on their bonds filed in accordance with the provisions of this contract, to the amount and extent of said bonds. Of all expenses of arbitration, including salaries of arbitrators and umpire, and of the special inspector or inspectors, if any, appointed by the Governor, and all lawful expenses of such arbitration, the Ducktown Sulphur, Copper & Iron Company, Ltd., shall pay one-third and the Tennessee Copper Company two-thirds.

9. No citizen of the State of Georgia having or claiming to have any right of action for damages on account of injury done by said Companies shall be bound by the terms of this contract, unless such citizen shall voluntarily submit his claim to arbitration under the rules and regulations referred to in the foregoing paragraph of this contract, in which event he shall be bound by the award.

10. Said arbitrators shall personally investigate each claim submitted for arbitration hereunder by the citizens of Georgia for damage to their crops or timber caused by sulphur dioxide fumes from the plant of the companies, and shall appraise such damage, if any, and shall make an award in cash therefor, which award shall be paid upon warrant as may be prescribed in the rules referred to in the preceding section hereof.

11. In case of the death, resignation, or removal by the companies, of the companies' arbitrator, they shall name another arbitrator to take his place and perform the duties required of him under this contract and shall notify the Governor of such change. If a vacancy shall occur as to the arbitrator appointed under this contract on behalf of the State by reason of the death, resignation or inability of such State's arbitrator to act, the vacancy shall be filled by the appointment by the Governor of another disinterested and competent person to fill the place and discharge the duties of State's arbitrator and inspector. The Governor shall at any time have the power to remove the State's arbitrator and to appoint a successor for cause.

12. The State agrees that, provided this contract shall not be breached by the Company, it will not, prior to October 1st, 1927, apply for injunctive or other relief against the Ducktown Sulphur, Copper & Iron Company, Ltd., in the above entitled matter. Upon the termination of this agreement whether by breach by the Ducktown Sulphur, Copper & Iron Company, Ltd., or by lapse of time, the rights and defenses of the parties hereto shall not be abridged, and the status of the above entitled cause shall be as though no contract had been entered into between the parties, and the State shall have the right to undertake to obtain relief herein, and the Company shall have the right to undertake to make defense thereto, except that upon cancellation or termination hereof as above provided, the Company agrees that it shall not have the right to and will not make the defense that the State has waived or been deprived of the right to an ultimate decree of injunction because this contract has been entered into between the parties hereto.

13. Whenever, from time to time, in the opinion of the Governor of the State, there shall arise the necessity for a

determination of the bona fide performance of this contract, then upon thirty (30) days written notice to the Company, addressed to it at Isabella, Tennessee, the company shall appoint one arbitrator of its own selection; the State of Georgia, by the Governor, shall appoint the State Chemist of the State of Georgia, or such other person as the Governor may deem proper, as arbitrator for the State; and such two arbitrators shall select some competent person as umpire, and in the event said two arbitrators cannot agree on an umpire, then such umpire shall be appointed by the President of the University of Virginia, which board so created shall determine the question of the bona fide performance of this contract, and a majority finding of such board on that question shall be final and binding upon the parties hereto, and in the event such finding is that there has been a breach of this contract by the company, the State may thereupon, at its election, treat this contract as at an end, and the status of the above entitled cause shall thereupon be as though no contract had been entered into between the parties and the State shall have the right to undertake to obtain relief therein, and the Company shall have the right to undertake to make a defense thereto. In the event of cancellation, as provided in this clause, the liability of the Company to the extent of that current year's liability (that is to say, the year in which the cancellation occurs) shall nevertheless remain in full force and effect for the purpose of paying awards under this contract for damages occurring prior to such cancellation, to the extent of the liability provided for such year hereunder.

14. Neither of the parties hereto admits any of the claims or contentions of the other parties hereto in the above entitled cause, and nothing herein contained shall be construed as any admission by the Company that any damage is now being done or will hereafter be done to property of the citizens of Georgia or to the State of Georgia.

15. This contract, unless terminated by breach as provided in paragraph (13) thirteen, shall remain in effect for at least the period of time hereinbefore provided, that is to say, until October 1st, 1927. It shall continue thereafter until at least six (6) months previous notice in writing shall be given by either party to the other party of its intention to terminate the contract.

16. In the event that the Tennessee Copper Company shall breach its contract made under the same conditions as this contract with the Ducktown Sulphur, Copper & Iron Company, or if said contract with the Tennessee Copper Company shall be otherwise terminated under its provisions said breach or termination shall not affect the status of this contract with the Ducktown Sulphur, Copper & Iron Company, Ltd., except that, in that event, the provisions herein made as to the agreed proportion of damages and expenses between the two companies shall be abrogated, and in this case the liability of the Ducktown Sulphur, Copper & Iron Company, Ltd., shall be in accordance with the provisions of the contract (which was made prior to the contract of August 20th, 1918) between the State of Georgia and said Ducktown Sulphur, Copper & Iron Company, Lted.

17. The right given under the resolution approved August 20th, 1918, known as Senate Resolution No. 82, enacted by the General Assembly of Georgia under the same general subject-matter as that herein dealt with, whereby the Governor is authorized, on behalf of the State, to agree with said companies or either of them upon such further terms, modifications or provisions, if any, as will in his judgment better protect the interests of the State of Georgia and its citizens, is recognized and made a part of this contract, and, likewise, the contract hereby entered into shall be construed and interpreted in the light of the terms and provisions of said contract of August 20th, 1918, between the same parties.

IN WITNESS WHEREOF, these presents have been signed in duplicate by his Excellency, Thos. W. Hardwick, Governor, in behalf of the State of Georgia, and by the Ducktown Sulphur, Copper & Iron Company, Ltd., by its General Manager, on this the 30th day of July, A. D., 1921, at Atlanta, Georgia.

STATE OF GEORGIA
By THOS. W. HARDWICK,
Governor.
DUCKTOWN SULPHUR, COPPER & IRON COMPANY, LTD.,
By W. F. LAMOREAUX
General Manager.

A RESOLUTION

To authorize and direct the Governor of this State to contract in respect to the subject matter of the litigation pending in the Supreme Court of the United States between the State of Georgia and the Tennessee Copper Company and the Ducktown Sulphur, Copper & Iron Company, Ltd, to provide for the settlement of damages done to the citizens of Georgia; to provide for the modification of existing contracts between the State of Georgia and the Tennessee Copper Company, and the Ducktown Sulphur, Copper & Iron Company, Ltd., and for other purposes.

WHEREAS, the State of Georgia has pending against the Tennessee Copper Company and the Ducktown Sulphur Copper & Iron Company, Ltd., in the Supreme Court of the United States an action for injunction and other relief, which has been pending for a number of years: but the State has found it more expedient and in the interest of its citizens to give to these companies an opportunity to remedy the evils complained of and to adjust such damages as may be done to citizens of this State through a system of arbitration; and in pursuance of this policy the Governor, at the direction of the General Assembly, from time to time has entered into contracts with these companies designed to the end just stated; and

WHEREAS, during the operation of these contracts the companies have relieved the conditions formerly existing; and such damages as now occur are casual and easily to be compensated by the award of damages in individual cases; and

WHEREAS, these improvements and diminution of the damage have progressed to such an extent that the annual damages is now much less than the expenses of the arbitration board, so that it is no longer necessary to expend large sums of money hitherto spent in the maintenance of the arbitration system as formerly maintained, but the same can now be operated effectively at much less expense,

THEREFORE, Be it resolved by the General Assembly of Georgia (the Senate and the House of Representatives concurring) that the Governor is authorized and directed

to enter into a new contract or contracts with said companies, said contracts to be substantially of the same nature as the contracts now in force and to extend for a period of five years from the expiration of the present contracts, but the same provisions as to the termination thereof as are contained in the provisions of Section 10 and 12 of the contract between the State of Georgia and the Tennessee Copper Company as set forth in the joint resolution of the General Assembly of Georgia on that subject approved August 6, 1913, relating to notice of termination and the means by which such contracts may be terminated for failure of the company bona fide to live up to the contract, shall be part of the new contracts.

Furthermore the now contracts shall contain the same limitations as to the amount of sulphur dioxide gases which may be emitted from said plants as are contained in the present contracts, to-wit: The daily escapage of Tennessee Copper Company shall be not exceeding eighty-eight (88) tons and that of Ducktown Sulphur, Copper & Iron Company, Ltd., not exceeding forty (40) tons, during the growing season provided for in said contracts, being from April 10th to October 1st, of each year.

HOWEVER, in the interest of economy, it is directed that the Governor is authorized to agree with the said companies on the following changes in the system of arbitration:

The Governor shall appoint a disinterested and capable State's Arbitrator; and the State's Arbitrator shall, in addition to his powers as arbitrator, act as the State's sole standing inspector, with all the powers of any inspector appointed by the Governor under existing contracts; and the office of existing inspectors under the present contracts are abolished; provided, nevertheless, the Governor may in his discretion, on complaint of any citizen or at any other time when he thinks the circumstances so require, send a special inspector, at the expense of the companies, to visit said plants or the territory adjacent thereto, and make a special report to the Governor on any matter as to which the Governor may desire special information. The State's Arbitrator shall receive a salary not exceeding $100.00 per month, for the period from April 10th to November 1st of

each year and his necessary expenses (to be audited and allowed by the Governor) while he is actually engaged in the work, the same to cover his services as arbitrator and inspector. The Governor shall see to it that at all times, at least one of the arbitrators shall be a citizen of one of the counties of Fannin, Gilmer or Union.

The office of standing umpire is abolished, but the new contracts shall provide that in the event the arbitrator appointed by the Companies and the State's Arbitrator are unable to agree, and only in the event of such disagreement, the Governor shall designate some person to act as umpire in the matter as to which the two arbitrators have so disagreed, said umpire to receive as compensation for his services not exceeding $10.00 a day and his actual expenses, to be fixed, audited and allowed by the Governor, while engaged in determining the matter as to which he is called in by the disagreement of the two arbitrators.

Nothing herein shall in any wise relieve the said companies from paying the expenses of the arbitration system, as provided in the original contracts, except as herein modified. The ratio of liability as between the two companies shall remain as in the contracts now in force.

Upon such new contracts being satisfactorily executed between the Governor, on behalf of the State of Georgia, and the said companies, through their respective representatives, the Attorney-General of the State is directed to join with the attorneys representing said companies respectively in taking such steps in the Supreme Court of the United States as will carry the agreement into effect, so as to provide for a suspension of the proceedings in the Supreme Court of the United States during the period in which said contracts shall remain of force.

HERBERT CLAY, President of the Senate.

DEVEREAUX F. McCLATCHEY,
Secretary of the Senate.

W. CECIL NEILL, Speaker of the House of Representative
E. B. MOORE Clerk of the House of Representatives.

APPROVED JULY 27, 1921.

THOMAS W. HARDWICK, Governor.

IN SENATE

VOTE:

Read 1st Time July 18, 1921
Read 2nd Time July 19, 1921
Read 3rd Time July 20, 1921 and passed

Ayes 28 Nayes 0.

Devereaux F. McClatchey, Secy., Senate.

IN HOUSE

Read 1st Time July 22, 1921
Read 2nd Time July 25, 1921
Read 3rd Time July 26, 1921 and passed

Ayes 110 Nayes 0.

E. B. Moore, Clerk of House

By Messrs Haralson of the 40th and Richards of 41st.

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MAY 20 1918
JAMES D. MAHER,
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No. 1, ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1917.

THE STATE OF GEORGIA,
Plaintiff,

VS.

THE TENNESSEE COPPER COMPANY
AND
THE DUCKTOWN SULPHUR, COPPER AND IRON COMPANY, LIMITED,
Defendants.

IN EQUITY.

PETITION OF THE DUCKTOWN SULPHUR, COPPER AND IRON COMPANY, FOR MODIFICATION OF INJUNCTION.

W. B. MILLER,
Attorney for Petitioner.

MACGOWAN-COOKE, CHATTANOOGA

No. 1.— ORIGINAL.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1917.

THE STATE OF GEORGIA,
Plaintiff,

vs.

THE TENNESSEE COPPER COMPANY

AND

THE DUCKTOWN SULPHUR, COPPER AND IRON COMPANY,
Defendants.

PETITION OF THE DUCKTOWN SULPHUR, COPPER AND IRON COMPANY, LIMITED, FOR MODIFICATION OF INJUNCTIVE ORDER APRIL 3, 1916.

To the Honorable, The Supreme Court of the United States:

Your petitioner, defendant The Ducktown Sulphur, Copper and Iron Company, Limited, respectfully shows that for some years it has been principally engaged in the production of copper matte (which yields refined copper) and of sulphuric acid.

These commodities are produced at Isabella, Polk County, Tennessee, by smelting copper ores containing sulphur, necessarily released in the smelting process. Thus the litigation above.

Petitioner further shows that increased supplies of copper and sulphuric acid are so vital to the successful prosecution of the present war, that various departments of the Federal Government are trying to stimulate production. And they have represented to Petitioner the extreme necessity for both copper and sulphuric acid.

In response, Petitioner has advised them (which it here avers to be true) that it could materially increase its yield of copper matte and sulphuric acid, save for the restrictions imposed herein by decree of April 3, 1916, limiting its operations, which is here referred to for its contents. See 240 U. S. 650.

So much of said restrictions upon petitioner's operations as are here deemed pertinent are:

> "2. That it shall not hereafter from April 10 to October 1, in any year, permit escape into the air of gases the total sulphur content of which shall exceed twenty-five tons during one day, and not more than fifty tons per day shall be permitted to escape at other times.
>
> "3. * * * It shall also keep a weather record showing direction and velocity of wind, humidity, temperature and pressure at intervals of six hours."

Petitioner is informed by the Honorable Secretary of the Navy that on February 14th last he wrote the Honorable Attorney General of Georgia touching a consent modification of the injunctive decree aforesaid to permit of a greater output of copper and sulphuric acid, and with respect thereto in part said:

> "At this critical time, when the needs of the war are demanding these commodities in such

quantities that the industries are actually failing to produce enough to meet urgent military and domestic requirements, anything which can reasonably be done to increase production cannot fail to be a distinct national service."

Petitioner is further informed that, for satisfactory reasons, the Honorable Attorney General of Georgia preferred to not stipulate in the premises—even though petitioner hereby seeks a modification entirely within the limitations recommended by Dr. John T. McGill, Commissioner, appointed by this Court. (See his Report of January 1, 1916, pages 59, 60, 63 and 64.)

The Commissioner, after careful study and observations at close range for six months, recommended petitioner's operations be so conducted —

> "That, in ordinary conditions of the atmosphere, a total sulphur content of the gases escaping of not exceeding forty tons per day for two consecutive days during the period from May 1 to October 1 of each year be permitted, and not exceeding eighty tons per day for two consecutive days during the remaining months of the year." (See p. 60, Report.)

So conducting petitioner's operations would materially increase the output of copper and sulphuric acid—and thus greatly assist the War and Navy Departments.

Moreover, petitioner verily believes and respectfully submits, as suggested by the Commissioner, that no damage of consequence would result to plaintiff from such proposed increase.

The Commissioner also pointed out that, owing to variable content of the ores, the sulphur output could not be accurately forecast—and hence a *daily* measurement (as now existing) was much more onerous to petitioner than a 2-day measurement. On this feature he said (Italics ours):

> "With a given daily smelting capacity, the total amount of sulphur entering the furnace depends primarily upon the amount of sulphur contained in the ores smelted. These ores vary widely in composition from day to day, since they are mined from numerous stopes or chambers in the mines, and it is very rare that on any two consecutive days the percentage of sulphur contained in these days' shipments will be the same. The result is that the smelter is called upon to make radical adjustments in the proportioning of the charges in order to maintain even approximately a uniform amount of sulphur entering the furnace. And not only does the sulphur content vary in an *uncontrollable manner*, but likewise the iron and copper content of the ores. This results in a varying composition of the matte and slag products of the furnaces as well as the gases leaving the furnace top and over which the smelter has only a very limited control. Nor can the metallurgist compute the exact daily output of sulphur from the furnace until the day's work is done, and all assays of the resulting furnace products have been made and careful calculations worked out.
>
> "It is true that the result of these computations are employed as a basis for the following day's operations, but meanwhile it will be found that the constituents entering the furnace have again changed in composition. *It is evident,*

therefore, that no reliable means is available to predict exactly that a future day's operations will produce in the amount of sulphur escaping from the furnace.

"The only rational method of recovering the sulphur from escaping furnace gases thus far adaptable upon a working scale is that of converting the sulphur dioxide into sulphuric acid. The defendant's acid plant has a normal average capacity of approximately 135 tons acid per diem when treating gases of uniform composition. Any decrease in the percentage of SO_2 results in the sluggish chemical reactions in the acid-making process; so that production is correspondingly reduced.

"Now, the total amount of sulphur escaping to the atmosphere is equal to the difference in the amounts of actual sulphur in the dioxide leaving the smelting furnace and that recovered by the acid plant in the form of sulphuric acid. As in the case of the smelter output, so it is in computing the acid production; i. e., there is no way of predetermining the acid production.

"Considering the above conditions, it is at once evident that neither the smelter nor the acid maker can predict his respective output or recovery of sulphur in such manner as to maintain a *uniform escape* of sulphur to the atmosphere equal to any prescribed amount, say, twenty tons per diem; nor, indeed, to approximate closely any prescribed amount.

"*For these reasons, the defendant has been compelled to restrict its output to an amount greatly below the prescribed amount in order to conscientiously avoid any possibility of exceeding the limiting amount, and even so, this limit is occasionally exceeded.*" (See pp. 62-4 Report.)

Hence the Commissioner's recommendation for measurement, based on "two consecutive days" as above.

Petitioner is further advised and submits that so much of the order passed April 3, 1916, as requires it to "keep a weather record" should, for the present at least, be suspended. The procedure is quite expensive, and petitioner submits can presently serve no necessary purpose. It is required to continuously maintain a species of weather observatory and to periodically make and file verified weather reports, in addition to the monthly reports of its smelting operations.

It is informed that the weather reports are never inspected by plaintiff or its counsel, and it apprehends the plaintiff is indifferent as to their continuation—certainly for the time-being.

Petitioner therefore proposes and prays that the previous order be now and here so modified as to read:

> "(1) That the restrictions and limitations heretofore placed on The Ducktown Sulphur, Copper and Iron Company, Limited, and its operations are for the present in all respects removed, *except* 'That, in ordinary conditions, the total sulphur content of the gases escaping into the atmosphere from such operations shall not exceed forty tons per day for two consecutive days during the period from May 1 to October 1 of each year, and not exceeding eighty tons per day for two consecutive days during the remaining months of the year.'
>
> "(2) That defendant The Ducktown Sulphur, Copper and Iron Company, Limited, here-

after shall not permit escape into the air from its works of fumes carrying more than 45 per cent. of the sulphur contained in green ores subjected to smelting.

"(3) That it shall keep a daily record of the amount of green ores smelted, sulphur in green ore, acid made, sulphur in acid, percentum of sulphur recovered, sulphur escaping, and percentum of sulphur escaping, so that statements may be compiled therefrom substantially the same as Table 3, page 19, printed report of the Inspector. These records, verified by the oath of a responsible officer or employee of the defendant, shall be reported to the Clerk of this Court immediately after the end of each calendar month.

"(4) The cause will be retained on the docket until further order, with leave to any party in interest to seek subsequent relief as advised."

Petitioner has notified the Honorable Attorney General of Georgia that on May 20th, 1918, it will move a modification of the former orders and decrees herein — and it attaches below an appropriate acknowledgment and stipulation, signed by the Honorable Attorney General of Georgia, original of which is on file in this cause.

This May 6, 1918.

THE DUCKTOWN SULPHUR, COPPER & IRON CO., LTD.,
By W. B. MILLER, Attorney.

State of Tennessee,
Hamilton County.

W. B. Miller, being duly sworn, deposes and says he is counsel for above petitioner The Ducktown Sulphur, Copper and Iron Company, Limited; that he has read the foregoing petition, and that same is true in substance and in fact to the best of his knowledge, information and belief.

Sworn to and subscribed before me
this May 6, 1918.

W. B. MILLER.

CHARLES W. LUSK,
Notary Public.

(Seal)

The State of Georgia hereby acknowledges and accepts due and legal notice, together with copy of the foregoing application and the accompanying motion of petitioner, and agrees that same may be submitted on the date proposed.

This May 7th, 1918.

CLIFFORD WALKER,
Attorney General of Georgia.

SUPREME COURT OF THE UNITED STATES.

STATE OF GEORGIA, *et al.*
vs.
TENNESSEE COPPER COMPANY
AND
THE DUCKTOWN SULPHUR, COPPER AND IRON CO., LIMITED.

EQUITY CAUSE, No. 1, ORIGINAL.

MOTION OF THE DUCKTOWN SULPHUR, COPPER AND IRON COMPANY, LIMITED, FOR MODIFICATION OF INJUNCTIVE ORDER APRIL 3, 1916.

The defendant The Ducktown Sulphur, Copper and Iron Company, Limited, moves for a modification of the injunctive order of April 3, 1916, in accordance with the prayer of its accompanying petition even date, filed herewith.

This May 6, 1918.

W. B. MILLER,
Solicitor.

Copy duly acknowledged May 7th, 1918.

CLIFFORD WALKER,
Attorney General of Georgia.

FILE COPY

In the Supreme Court of the United States

OCTOBER TERM, 1925

STATE OF GEORGIA, BY ITS ATTORNEY-GENERAL, Complainant,	Original Cause No. 1
vs.	
TENNESSEE COPPER COMPANY, ET AL., Defendants.	In Equity

JOINT MOTION OF THE STATE OF GEORGIA AND OF TENNESSEE COPPER COMPANY TO FILE AN EXTENSION OF THE CONTRACT AND STIPULATION HERETOFORE ENTERED IN THIS CAUSE

GEORGE M. NAPIER,
Attorney-General for State of Georgia.

JOHN D. LITTLE
ARTHUR G. POWELL
MARION SMITH
MAX F. GOLDSTEIN
JOHN H. FRANTZ
THOMAS G. McCONNELL
CHARLES M. SEYMOUR
ROBERT M. McCONNELL
Counsel for Tennessee Copper Company.

S. B. NEWMAN & CO., KNOXVILLE, TENN.

In the Supreme Court of the United States

STATE OF GEORGIA, Complainant, vs. TENNESSEE COPPER COMPANY AND DUCKTOWN SULPHUR, COPPER & IRON CO., LTD., Defendants.	Original Cause No. 1 In Equity October Term 1925

Now comes the State of Georgia by its Attorney-General, George M. Napier, and the Tennessee Copper Company by its counsel, John D. Little, Arthur G. Powell, Marion Smith, Max F. Goldstein, John H. Frantz, Thomas G. McConnell, Charles M. Seymour and Robert M. McConnell, and show to the Court that on the 23rd day of September, 1925, the Tennessee Copper Company filed its written assent to an extension of the contract and stipulation in respect to the subject matter of the above entitled cause, which contract and stipulation has been heretofore entered of record in this cause, and said extension is in accordance with a resolution passed by the General Assembly of Georgia and approved by the Governor of that State, a copy of said assent of Tennessee Copper Company and said resolution being hereto attached as exhibits and made a part hereof.

WHEREFORE the State of Georgia and the Tennessee Copper Company do now join in moving the Court that said resolution and said assent of Tennessee Copper Company be entered of record in said cause and that the Court give effect thereto by ordering that the further

progress of said cause in so far as the same relates to Tennessee Copper Company be suspended and continued in accordance therewith, and that the Court grant all such other and further orders in the premises as shall be necessary to extend said contract and stipulation for the period provided for in said resolution.

GEORGE M. NAPIER

Attorney General of the State of Georgia

JOHN D. LITTLE

ARTHUR G. POWELL

MARION SMITH

MAX F. GOLDSTEIN

JOHN H. FRANTZ

THOMAS G. McCONNELL

CHARLES M. SEYMOUR

ROBERT M. McCONNELL

Counsel for Tennessee Copper Company

In the Supreme Court of the United States

STATE OF GEORGIA Complainant vs. TENNESSEE COPPER COMPANY AND DUCKTOWN SULPHUR COPPER & IRON CO., LTD., Defendants.	}	Original Cause No. 1 In Equity.

TO THE HONORABLE CLIFFORD WALKER, GOVERNOR STATE OF GEORGIA:

ASSENT OF TENNESSEE COPPER COMPANY TO EXTENSION OF CONTRACT AND STIPULATION

In accordance with the provisions of a resolution passed by the General Assembly of Georgia and approved by you as Governor of that State on the 25th day of July, 1925, Tennessee Copper Company does hereby give its assent to the extension of said contract and stipulation in accordance with the terms of said resolution and respectfully requests that you file this notice as said assent and enter upon the executive minutes the fact that Tennessee Copper Company has given notice of its assent to said extension of the said contract and stipulation for the time set forth in said resolution.

This 19th day of September, 1925.

TENNESSEE COPPER COMPANY,
By J. N. Houser,
General Manager.

The foregoing assent of Tennessee Copper Company to the extension of the contract and stipulation between the State of Georgia and that Company was filed in my office on the 23rd day of September, 1925, and entered upon the Executive Minutes on that date.

CLIFFORD WALKER,
Governor State of Georgia.

Executive Department Seal

By the governor; Myrtle White, Secretary Executive Department.

A RESOLUTION

To be entitled a joint resolution to authorize and direct the Governor of this State to contract in respect to the subject-matter of the litigation pending in the Supreme Court of the United States between the State of Georgia and the Tennessee Copper Company and the Ducktown Sulphur, Copper & Iron Company, Ltd., to provide for the settlement of damages done to the citizens of Georgia, to provide for the extension of existing contracts, and for other purposes.

WHEREAS, the State of Georgia has pending against the Tennessee Copper Company and the Ducktown Sulphur, Copper & Iron Company, Ltd., in the Supreme Court of the United States an action for injunction and for other relief, which has been pending for a number of years, but the State of Georgia has found it more expedient and to the interest of its citizens to give these companies opportunity to remedy the evils complained of and to adjust such damages as may be done to citizens of this State through a system of arbitration, and in pursuance of this policy the Governor, at the direction of the General Assembly, from time to time has entered into contracts with these companies designed to the end just stated; and

WHEREAS, the present existing contracts between the State of Georgia and the two companies aforesaid are in force by virtue of the provisions of the joint resolution of the General Assembly of Georgia approved July 27, 1921; and

WHEREAS, the conditions stated in the preamble to that resolution still exist and it is more advantageous to the State of Georgia and its citizens to continue this relation than it would be to ask for an injunction in the premises.

THEREFORE, Be it resolved by the General Assembly of Georgia (the Senate and House of Representatives concurring) that by and with the consent of said companies or either of them the existing contracts between the State of Georgia and said respective companies are hereby extended for a period of five years from their expiration, but with the understanding that such provisions as to the termination thereof as are contained in Sections 10 and 12 of the contract between the State of Georgia and the Tennessee Copper Company, as set forth in the joint resolution of the General Assembly of Georgia on that subject approved August 6, 1913, relating to notice of termination and the means by which such contracts may be terminated for the failure of the company bona fide to live up to the contracts, shall be considered as a part of the contracts as extended. Upon said companies or either of them filing with the Governor their assent to the provisions of this resolution and extension of said contract, the same shall, as to the company so assenting, or as to both of them in the event they both do assent, be continued and extended for five years from the expiration of the present existing contracts and the Governor is directed to enter the fact of such extension on the contracts and on the executive minutes. Upon said companies or either of them executing and delivering to the Governor, through their respective representatives, their assent to the extension of said contracts, the Attorney-General is directed to join with the attorneys representing the company or companies so assenting in taking such steps in the Supreme Court of the United States as will carry this agreement into effect, and so as to provide that no injunction shall issue in said suits against such assenting company or companies

during the period in which said contract as extended shall remain in force and until the General Assembly of Georgia otherwise directs.

J. HOWARD ENNIS,
President of the Senate.

DEVEREAUX F. McCLATCHEY,
Secretary of the Senate.

W. CECIL NEILL,
Speaker of the House of Representatives,

E. B. MOORE,
Clerk of the House of Representatives.

APPROVED JULY 25, 1925.

CLIFFORD WALKER,
Governor.

IN SENATE

Read 1st time July 15, 1925
Read 2nd time July 16, 1925
Read 3rd time July 17, 1925 and passed
Ayes 28 Nayes 0
Devereaux F. McClatchey, Secty. Senate.

IN HOUSE

Read 1st time July 21, 1925
Read 2nd time July 22, 1925
Read 3rd time July 25, 1925 and passed
Ayes 110 Nayes 0
E. B. MOORE, Clerk of House.

By Messrs. Wellborn of the 40th, Pruett of the 32nd and Owen of the 41st.

FILE COPY

FILED
FEB 27 1922
WM. R. STANSBURY

In the Supreme Court of the United States

OCTOBER TERM 1921

STATE OF GEORGIA, BY ITS ATTORNEY-GENERAL, *Complainant,* *vs.* TENNESSEE COPPER COMPANY, ET AL., *Defendants.*	Original Cause No. I In Equity

JOINT MOTION OF THE STATE OF GEORGIA AND OF TENNESSEE COPPER COMPANY TO FILE A STIPULATION

GEORGE M. NAPIER,
Attorney-General for State of Georgia.

JOHN D. LITTLE,
ARTHUR G. POWELL,
MARION SMITH,
MAX F. GOLDSTEIN,
B. L. SMITH,
JOHN H. FRANTZ,
THOMAS G. McCONNELL,
CHARLES M. SEYMOUR,
ROBERT M. McCONNELL,
Counsel for Tennessee Copper Co.

[illegible] HERMAN & CO., NASHVILLE, TENN.

In the Supreme Court of the United States

STATE OF GEORGIA, *vs.* TENNESSEE COPPER COMPANY and DUCKTOWN SULPHUR, COPPER & IRON COMPANY, Ltd.	Original Cause No. 1 In Equity October Term 1921.

Now comes the States of Georgia by its Attorney General, George M. Napier, and the Tennessee Copper Company by its counsel, John D. Little, Arthur G. Powell, Marion Smith, Max F. Goldstein, B. L. Smith, John H. Frantz, Thos. G. McConnell, Chas. M. Seymour, and Robert M. McConnell, and show to the Court that on the 30th day of July, 1921, the State of Georgia through its Governor and in pursuance of a joint resolution of the General Assembly of Georgia, the House and the Senate concurring, entered into a contract and stipulation in respect of the subject matter of the above entitled cause, a copy of which contract is hereto attached as an Exhibit and is made a part hereof, and there being attached to said contract a copy of the resolution authorizing said contract and under which it has been executed.

WHEREFORE, the State of Georgia and Tennessee Copper Company do now join in moving the court that this contract and resolution attached thereto be entered of record as a stipulation of the State of Georgia and Tennessee Copper Company in said cause, and that the court

give effect thereto by ordering that the further progress of said cause so far as relates to Tennessee Copper Company be suspended and continued in accordance with the terms of said contract and stipulation and that the court grant all such other and further orders in the premises as shall be necessary to carry said contract and stipulation into force and effect.

Geo. M. Napier,
Attorney General of the State of Georgia.

John D. Little,
Arthur G. Powell,
Marion Smith,
Max F. Goldstein,
B. L. Smith,
John W. Grant,
Thomas G. M. Connell,
Charles M. Seymour,
Robert M. McConnell,
Counsel for Tennessee Copper Co.

In the Supreme Court of the United States

STATE OF GEORGIA, (By its Attorney-General) *Complainant,* *vs.* TENNESSEE COPPER COMPANY and DUCKTOWN SULPHUR, COPPER and IRON COMPANY, Ltd., *Defendants,*	Original Cause No. 1 In Equity.

AGREEMENT AND STIPULATION

In pursuance of a joint resolution of the Senate and House of Representatives for the State of Georgia, approved July 27th, 1921, a copy of which is hereto attached, it is stipulated and agreed in the above entitled cause by and between the State of Georgia, through His Excellency, Thos. W. Hardwick, Governor of said State, herein called the State, and the Tennessee Copper Company, herein called the Company, as follows:

1. The Company binds itself to maintain and operate its sulphuric acid plant and acid making appliances and processes at the highest practical state of efficiency.

2. The Company further agrees that from April 10th to October 1st of each year, during the life of this contract, it will not permit the escape into the air of sulphur dioxide gases which have a total sulphur content of more than

eighty-eight (88) tons in any one day.

3. The Company shall make sworn reports to the Governor of the State, or such other person as he may designate, as to the tonnage of green ore smelted and tonnage of acid made during operations under this contract, such reports to be made at such intervals and in such form and manner as may be prescribed by the Governor of the State, or such other person as he may designate, with full right on the part of the State's arbitrator, acting ex-officio as Inspector hereunder, or such person as the Governor may specially designate in accordance with the further provisions hereof, to inspect the plant of the Company at such time or times during the life of this contract between said dates of each year as to the Governor may seem advisable or necessary for his information as to such tonnage of ore smelted and acid made during said period from year to year.

4.The said Company shall file with the Governor on October 1st, 1921, (to cover the period from October 1st, 1921 to October 1st, 1922), a bond with some solvent surety company admitted to do business in this State as surety, and payable to the Governor and his successors in office, in the penal sum of Sixteen Thousand Five Hundred ($16,500) Dollars, conditioned for the payment of its proportion, as herein specified, of each and every award made within the limits of and under the terms of this contract, and each and every item of expense due to be paid by said Company, as and when the same shall become payable under this contract; and on or before the first day of October of each and every year during the continuance of this contract, the said Company shall file a new bond for each year; but said Company may aggregate a number of years together and file bond with the penalty as stated above multiplied by the number of years it is intended to cover, instead of filing bond for each of said years. If

said Company shall fail to file said bond when due to be filed, the Governor shall notify said Company by registered mail of its failure, and if the bond is not filed within thirty days after the giving of such notice, the Governor shall have the power to declare this contract terminated and ended. T he contract year, for the purpose of this contract, shall run from October 1st to October 1st of each year and as stated above, the first bond of said Company to be filed under this contract shall be for the period from October 1st, 1921 to October 1st, 1922. The Company has heretofore filed a bond which is now in effect and which covers the period from October 1st, 1920, to October 1st, 1921, and this bond terminating October 1st, 1921, shall be discharged when the bond is filed under this contract on October 1st, 1921.

5. The Company agrees to submit to a board of arbitration, to be constituted as hereinafter provided, the ascertainment and assessment of such damages as may be caused to the citizens of the State of Georgia and their property by sulphur dioxide gases produced by its plant in the State of Tennessee, to an amount and extent not exceeding Sixteen Thousand Five Hundred ($16,500), per annum; but there shall be reserved to all citizens of the State of Georgia who do not submit their claims to such arbitration the right to sue upon or otherwise adjust their claims or demands against said Company accordingly as they might do if this contract were not made.

6. The board of arbitration herein referred to shall be composed as follows: The Tennessee Copper Company and the Ducktown Sulphur, Copper & Iron Company, Ltd., shall appoint one arbitrator whose compensation and expenses shall be paid by them, to be known as the Companies' arbitrator. The Governor of the State shall appoint one arbitrator who shall be known as the State's arbitrator. Unless the arbitrator appointed by the com-

panies aforesaid shall be a citizen of one of the three counties of Fannin, Gilmer or Union, then the State's arbitrator shall be a citizen of one of those counties and may be selected from one of those counties, even though the Companies' arbitrator also resides therein. The State's arbitrator shall also be ex-officio an inspector and shall perform the duties which have hitherto devolved upon the inspectors appointed by the Governor under prior existing contracts between the State of Georgia and the Tennessee Copper Company. In the event the arbitrator appointed by the Companies and the State's arbitrator are unable to agree in respect of any award or any matter affecting their duties under the contract, and only in the event of such disagreement, the Governor shall designate some disinterested person to act as umpire in the matter as to which the two arbitrators have so disagreed, and the decision of the majority of the board as thus constituted shall constitute the action of the board and be binding accordingly. The State's arbitrator shall receive a salary not exceeding One Hundred ($100) Dollars a month for the period from April 10th to November 1st of each year, and his necessary expenses to be audited and allowed by the Governor, when he is actually engaged in the work, the same to cover his services as arbitrator and inspector. The Tennessee Copper Company, and the Ducktown Sulphur, Copper & Iron Company, Ltd., may arrange to have the salary of the State's arbitrator paid direct to him by them; however, all of the necessary expenses, both of the Companies' arbitrator and of the State's arbitrator, while engaged in all of their duties in respect to this contract, shall be paid by the Companies' arbitrator and the Companies' arbitrator shall keep separate account of the expenses of the State's arbitrator and render bills in duplicate to the Tennessee Copper Company and the Ducktown Sulphur, Copper & Iron Company, Ltd., for same; and such sums so paid shall operate to discharge the liability of said Companies to

the same extent as if paid to the Governor and disbursed by him to the State's arbitrator, or as if paid to the arbitrator upon order of the Governor; and the Companies shall file with the Governor duplicates of the receipted expense bills and salary receipts of the State's arbitrator for the funds so paid to him.

The umpire, if and when appointed in accordance with the provisions of this contract, shall receive as compensation for his services an amount not exceeding Ten ($10) Dollars per day and his actual expenses while engaged in determining the matters as to which he is called in by the disagreement of the two arbitrators, the same to be fixed, audited and allowed by the Governor, but the same may be paid to him by the two Companies directly, with duplicate receipt to the Governor, in like manner as provided in the case of the payment for the services of the State's arbitrator.

The Governor may in his discretion on complaint of any citizen or at any other time when he thinks the circumstances so require, send a special inspector, at the expense of the two Companies, to visit said plants or the territory adjacent thereto and make special report to the Governor on any matter as to which the Governor may desire such special information.

7. The power of the Governor of the State of Georgia, or such person as he may designate, to make and formulate rules and regulations for the Governing of such arbitration proceedings set forth in a joint resolution of the General Assembly of Georgia, approved August 6th, 1913, relating to general subject-matter herein contained and under which a contract was entered into between the State of Georgia and the Tennessee Copper Company, are consented to and agreed on as a part of this contract.

8. In order to effectuate and harmonize the consistent

operation of this contract with the contract between the State of Georgia and the Ducktown Sulphur, Copper & Iron Company, Ltd., relating to the same subject-matter, it is further stipulated and agreed that wherever a claim is filed by any citizen of Georgia (and the parties construe the words "citizen of Georgia" to include all persons, firms and corporations) on account of damages alleged to have been done in this State on account of sulphur dioxide gases from the plants of either or both of said companies, it shall not be necessary for the claimant to specify or prove which of said companies is legally responsible therefor; but if said board of arbitration shall find that such citizen has been damaged by either or both of said companies, they shall proceed to assess and award the damages, and each and both of said companies shall be liable in said award to the extent and amount herein specified, to-wit: of all awards so made, two-thirds of the amount shall be assessed against the Tennessee Copper Company and one-third against the Ducktown Sulphur, Copper & Iron Company, Ltd., and each of said companies and their sureties shall be accordingly liable on their bonds filed in accordance with the provisions of this contract, to the amount and extent of said bonds. Of all expenses of arbitration, including salaries of arbitrators and umpire, and of the special inspector or inspectors, if any, appointed by the Governor, and all lawful expenses of such arbitration, the Tennessee Copper Company shall pay two-thirds and the Ducktown Sulphur, Copper & Iron Company, Ltd., shall pay one-third.

9. No citizen of the State of Georgia having or claiming to have any right of action for damages on account of injury done by said Companies shall be bound by the terms of this contract, unless such citizen shall voluntarily submit his claim to arbitration under the rules and regulations referred to in the foregoing paragraph of this contract,

in which event he shall be bound by the award.

10. Said arbitrators shall personally investigate each claim submitted for arbitration hereunder by the citizens of Georgia for damage to their crops or timber caused by sulphur dioxide fumes from the plant of the companies, and shall appraise such damage, if any, and shall make an award in cash therefor, which award shall be paid upon warrant as may be prescribed in the rules referred to in the preceeding section hereof.

11. In case of the death, resignation, or removal by the companies, of the companies' arbitrator, they shall name another arbitrator to take his place and perform the duties required of him under this contract and shall notify the Governor of such change. If a vacancy shall occur as to the arbitrator appointed under this contract on behalf of the State, by reason of the death, resignation or inability of such State's arbitrator to act, the vavancy shall be filled by the appointment by the Governor of another disinterested and competent person to fill the place and discharge the duties of State's arbitrator and inspector. The Governor shall at any time have the power to remove the State's arbitrator and to appoint a successor for cause.

12. The State agrees that, provided this contract shall not be breached by the Company, it will not, prior to October 1st, 1927, apply for injunctive or other relief against the Tennessee Copper Company in the above entitled matter. Upon the termination of this agreement, whether by breach by the Tennessee Copper Company or by lapse of time, the rights and defenses of the parties hereto shall not be abridged, and the status of the above entitled cause shall be as though no contract had been entered into between the parties, and the State shall have the right to undertake to obtain relief herein, and the Company shall have the right to undertake to make defense thereto, ex-

cept that upon cancellation or termination hereof as above provided, the Company agrees that it shall not have the right to and will not make the defense that the State has waived or been deprived of the right to an ultimate decree of injunction because this contract has been entered into between the parties hereto.

13. Whenever, from time to time, in the opinion of the Governor of the State, there shall arise the necessity for a determination of the bona fide performance of this contract, then upon thirty (30) days written notice to the Company, addressed to it at 61 Broadway, New York City, the company shall appoint one arbitrator of its own selection; the State of Georgia, by the Governor, shall appoint the State Chemist of the State of Georgia, or such other person as the Governor may deem proper, as arbitrator for the State; and such two arbitrators shall select some competent person as Umpire, and in the event said two arbitrators cannot agree on an umpire, then such umpire shall be appointed by the President of the University of Virginia, which board so created shall determine the question of the bona fide performance of this contract, and a majority finding of such board on that question shall be final and binding upon the parties hereto, and in the event such finding is that there has been a breach of this contract by the company, the State may thereupon, at its election, treat this contract as at an end, and the status of the above entitled cause shall thereupon be as though no contract had been entered into between the parties and the State shall have the right to undertake to obtain relief therein, and the Company shall have the right to undertake to make a defense thereto. In the event of cancellation, as provided in this clause, the liability of the company to the extent of that current year's liability, (that is to say, the year in which the cancellation occurs) shall nevertheless remain in full force and effect for the pur-

pose of paying awards under this contract for damages occurring prior to such cancellation, to the extent of the liability provided for such year hereunder.

14. Neither of the parties hereto admits any of the claims or contentions of the other parties hereto in the above entitled cause, and nothing herein contained shall be construed as any admission by the Company that any damage is now being done or will hereafter be done to property of the citizens of Georgia or to the State of Georgia.

15. This contract, unless terminated by breach as provided in paragraph thirteen (13), shall remain in effect for at least the period of time hereinbefore provided, that is to say, until October 1st, 1927. It shall continue thereafter until at least six (6) months previous notice in writing shall be given by either party to the other party of its intention to terminate the contract.

16. In the event that the Ducktown Sulphur, Copper & Iron Company, Ltd., shall breach its contract made under the same conditions as this contract with the Tennessee Copper Company, or if said contract with the Ducktown Sulphur, Copper & Iron Company, Ltd., shall be otherwise terminated under its provisions, said breach or termination shall not affect the status of this contract with the Tennessee Copper Company, except that, in that event, the provisions herein made as to the agreed proportion of damages and expenses between the two companies shall be abrogated, and in this case the liability shall be in accordance with the provisions of the contract (which was made prior to the contract of August 20th, 1918) between the State of Georgia and said Tennessee Copper Company.

17. The right given under the resolution approved August 29th, 1918, known as Senate Resolution No. 82, enacted by the General Assembly of Georgia under the

same general subject-matter as that herein dealt with, whereby the Governor is authorized on behalf of the State, to agree with said companies or either of them upon such further terms, modifications or provisions, if any, as will in his judgment better protect the interests of the State of Georgia and its citizens, is recognized and made a part of this contract, and, likewise, the contract hereby entered into shall be construed and interpreted in the light of the terms and provisions of said contract of August 20th, 1918, between the same parties.

IN WITNESS WHEREOF, these presents have been signed in duplicate by his Excellency, Thos, W. Hardwick, Governor, in behalf of the State of Georgia, and by the Tennessee Copper Company, by its General Manager, on this the 30th day of July, A. D. 1921, at Atlanta, Georgia.

STATE OF GEORGIA

By THOS. W. HARDWICK,
Governor.

TENNESSEE COPPER COMPANY,

By J. N. HOUSER,
General Manager.

A RESOLUTION

To authorize and direct the Governor of this State to contract in respect to the subject matter of the litigation pending in the Supreme Court of the United States between the State of Georgia and the Tennessee Copper Company and the Ducktown Sulphur, Copper & Iron Company, Ltd., to provide for the settlement of damages done to the citizens of Georgia; to provide for the modification of existing contracts between the State of Georgia and the Tennessee Copper Company and the Ducktown Sulphur, Copper and Iron Company, Ltd., and for other purposes.

WHEREAS, the State of Georgia has pending against the Tennessee Copper Company and the Ducktown Sulphur, Copper and Iron Company, Ltd., in the Supreme Court of the United States an action for injunction and other relief, which has been pending for a number of years; but the State has found it more expedient and in the interest of its citizens to give to these companies an opportunity to remedy the evils complained of and to adjust such damages as may be done to citizens of this State through a system of arbitration; and in pursuance of this policy the Governor, at the direction of the General Assembly, from time to time has entered into contracts with these companies designed to the end just stated; and

WHEREAS, during the operation of these contracts the companies have relieved the conditions formerly existing; and such damages as now occur are casual and easily to be compensated by the award of damages in individual cases; and

WHEREAS, these improvements and diminution of the damage have progressed to such an extent that the annual damage is now much less than the expenses of the arbitration board, so that it is no longer necessary to expend the large sums of money hitherto spent in the maintenance of

the arbitration system as formerly maintained, but the same can now be operated effectively at much less expense.

THEREFORE, be it resolved by the General Assembly of Georgia (the Senate and the House of Representatives concurring) that the Governor is authorized and directed to enter into a new contract or contracts with said companies, said contracts to be substantially of the same nature as the contracts now in force and to extend for a period of five years from the expiration of the present contracts, but the same provisions as to the termination thereof as are contained in the provisions of Section 10 and 12 of the contract between the State of Georgia and the Tennessee Copper Company as set forth in the joint resolution of the General Assembly of Georgia on that subject approved August 6, 1913, relating to notice of termination and the means by which such contracts may be terminated for failure of the company bona fide to live up to the contracts, shall be part of the new contracts.

Furthermore the new contracts shall contain the same limitations as to the amount of sulphur dioxide gases which may be emitted from said plants as are contained in the present contracts, to-wit: The daily escapage of Tennessee Copper Company shall be not exceeding eight-eight (88) tons and that of Ducktown Sulphur, Copper & Iron Company, Ltd., not exceeding forty (40) tons, during the growing season provided for in said contracts, being from April 10th, to October 1st, of each year.

HOWEVER, in the interest of economy, it is directed that the Governor is authorized to agree with the said companies on the following changes in the system of arbitration:

The Governor shall appoint a disinterested and capable State's arbitrator; and the State's arbitrator shall, in addition to his powers as arbitrator, act as the State's sole

standing inspector, with all the powers of any inspector appointed by the Governor under existing contracts; and the office of existing inspectors under the present contracts are abolished; provided nevertheless, the Governor may in his discretion, on complaint of any citizen or at any other time when he thinks the circumstances so require, send a special inspector, at the expense of the companies, to visit said plants or the territory adjacent thereto, and make a special report to the Governor on any matter as to which the Governor may desire special information. The State's arbitrator shall receive a salary not exceeding $100.00 per month, for the period from April 10th to November 1st of each year and his necessary expenses (to be audited and allowed by the Governor) while he is actually engaged in the work, the same to cover his services as arbitrator and inspector. The Governor shall see to it that at all times, at least one of the arbitrators shall be a citizen of one of the counties of Fannin, Gilmer or Union.

The office of standing umpire is abolished, but the new contracts shall provide that in the event the arbitrator appointed by the Companies and the State's arbitrator are unable to agree, and only in the event of such disagreement, the Governor shall designate some person to act as umpire in the matter, as to which the two arbitrators have so disagreed, said umpire to receive as compensation for his services not exceeding $10.00 a day and his actual expenses, to be fixed, audited and allowed by the Governor, while engaged in determining the matter as to which he is called in by the disagreement of the two arbitrators.

Nothing herein shall in any wise relieve the said companies from paying the expenses of the arbitration system, as provided in the original contracts, except as herein modified. The ratio of liability as between the two companies shall remain as in the contracts now in force.

Upon such new contracts being satisfactorily executed between the Governor, on behalf of the State of Georgia, and the said companies, through their respective representatives, the Attorney General of the State is directed to join with the attorneys representing said companies respectively in taking such steps in the Supreme Court of the United States as will carry the agreement into effect, so as to provide for a suspension of the proceedings in the Supreme Court of the United States during the period in which said contracts shall remain of force.

HERBERT CLAY,
President of the Senate

DEVEREAUX F. McCLATCHEY,
Secretary of the Senate.

W. CECIL NEILL,
Speaker of the House of Representatives

E. B. MOORE,
Clerk of the House of Representatives.

APPROVED JULY 27, 1921.

THOMAS W. HARDWICK,
GOVERNOR

VOTE:

IN SENATE

Read 1st Time July 18, 1921
Read 2nd Time July 19, 1921
Read 3rd Time July 20, 1921 and passed
Ayes 28 Nayes O.
Devereaux F. McClatchey, Secty. Senate.

IN HOUSE

Read 1st Time July 22, 1921
Read 2nd Time July 25, 1921
Read 3rd Time July 26, 1921 and passed
Ayes 110 Nayes O.
E. B. Moore, Clerk of House.

By Messers. Haralson of the 40th and Richards of 41st.